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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,640	12/14/2001	William R. Matz	36968/265387	9378

38515 7590 01/07/2005

BAMBI FAIVRE WALTERS
PO BOX 5743
WILLIAMSBURG, VA 23188

EXAMINER	
OUELLETTE, JONATHAN P	

ART UNIT	PAPER NUMBER
3629	

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/017,640	MATZ ET AL.	
	Examiner	Art Unit	
	Jonathan Ouellette	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 October 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,5-24 and 32-41* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,5-24 and 32-41* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. *20040617*.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Claims 4 and 25-31 have been cancelled, and Claims 32-41 have been added; therefore, Claims 1-3, 5-24 and 32-41 are currently pending in application 10/017,640.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 32-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Eldering et al. (US 6,457,010 B1).**

2. As per independent Claims 32-34, Eldering discloses a method (computer-readable medium, system) for utilizing information relating to a subscriber to identify said subscriber (abstract) comprising: receiving data from a plurality of programming and advertising sources; receiving viewing information associated with the subscriber, the viewing information indicating whether the subscriber viewed real-time data from a source other than the plurality of programming and advertising sources (video, computer content); receiving a subscriber attribute (household profile: Figs.1, 13-14), the

subscriber attribute comprising data about the subscriber; merging said data from a plurality of programming and advertising sources, said viewing information, and said subscriber attribute to create a subscriber information data store; and analyzing said subscriber information data store to determine said subscriber's desirability in relation to a provider (Abstract, C1, C2)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claims 1, 6, 10-13, 16-18, 35, 36, and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eldering.**

5. As per **independent Claims 1, 16, 17, and 35**, Eldering discloses a method (computer-readable medium, system) for utilizing information relating to a subscriber to identify said subscriber (Abstract) comprising: receiving data from a plurality of programming and advertising sources; receiving viewing information associated with the subscriber; the viewing information indicating whether the subscriber viewed data from at least one of the programming and advertising sources and a source other than the plurality of programming and advertising sources (video); receiving a subscriber attribute (household information), the subscriber attribute comprising data about the subscriber (Figs.1, 13-14); merging said data from the plurality of programming and advertising sources, said

viewing information, and said subscriber attribute to create a subscriber information data store; and analyzing said subscriber information data store to determine said subscriber's desirability in relation to a provider (Abstract, C1, C2).

6. Eldering fails to expressly disclose wherein said subscriber's desirability (household profile) is used to identify said subscriber to said provider.
7. However, Eldering does disclose providing household profile information (which includes demographic information and detailed viewing habits) to others who may determine if their programming or advertisements are suitable for the subscriber (C1 L39-67, C2 L1-7).
8. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein said subscriber's desirability (household profile) is used to identify said subscriber to said provider in the system disclosed by Eldering, for the advantage of providing a method (computer-readable medium, system) for utilizing information relating to a subscriber to identify said subscriber, with the ability to increase effectiveness of the system by providing a detailed analysis of specific household viewing habits to third parties (advertisers).
9. As per Claim 6, Eldering discloses wherein said subscriber attribute comprises demographic information.
10. As per Claims 10 and 36, Eldering discloses wherein said subscriber attribute comprises a purchase.
11. As per Claims 11 and 40, Eldering discloses wherein said purchase comprises a purchase of a product, wherein said product complements a product provided by said provider.

12. As per Claim 12 and 41, Eldering discloses wherein said purchase comprises a purchase of a product, wherein said product competes with a product provided by said provider.

13. As per Claim 13, Eldering discloses wherein said provider comprises a content provider.

14. As per Claim 18, Eldering discloses wherein said subscriber attribute database comprises a purchase history database

15. **Claim 2, 3, 5, 7-9, 14, 15, 19-24, and 37-39 are rejected under 35 U.S.C. 103 as being unpatentable over Eldering in view of Ludtke.**

16. As per Claim 2, Eldering and Ludtke do not expressly show wherein said subscriber comprises a consumer.

17. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of subscriber used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

18. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have performed the method (computer-readable medium, system) on a consumer subscriber, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the subscriber does not patentably distinguish the claimed invention.

19. As per Claims 3 and 5, Eldering and Ludtke do not expressly show wherein said data from the plurality of programming and advertising sources comprises television programming data or duration information.

20. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of content-access information used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

21. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using television programming data or duration information as the content-access information, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the content-access information does not patentably distinguish the claimed invention.

22. As per Claims 7, 8, 37, and 38, Eldering and Ludtke do not expressly show wherein said demographic information comprises a profession of said subscriber or a property ownership history of said subscriber.

23. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable

medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of demographic information used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

24. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a profession of said subscriber or a property ownership history of said subscriber as the demographic information, because such information does not functionally relate to the steps in the method claimed and because the subjective interpretation of the demographic information does not patentably distinguish the claimed invention.

25. As per Claims 9 and 39, Eldering and Ludtke do not expressly show wherein said subscriber attribute comprises a questionnaire response.

26. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of subscriber attribute used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

27. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a questionnaire response as a subscriber attribute, because such an attribute does not functionally relate to the steps in the method claimed and because the subjective interpretation of the subscriber attribute does not patentably distinguish the claimed invention.

28. As per Claims 14 and 15, Eldering and Ludtke do not expressly show wherein said content provider comprises a programming provider or an advertising provider.

29. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of content provider used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

30. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a programming provider or a advertising provider as a content provider, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the content provider does not patentably distinguish the claimed invention.

31. As per Claim 19, Eldering and Ludtke do not expressly show wherein said purchase history database comprises a credit card database.

32. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of purchase history database used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

33. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a credit card database as a form of purchase history database, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the purchase history database does not patentably distinguish the claimed invention.

34. As per Claims 20 and 21, Eldering and Ludtke do not expressly show wherein said subscriber attribute database comprises a property ownership database or a survey results database.

35. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said

subscriber as a desirable subscriber would be performed regardless of the type of subscriber attribute database used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

36. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a property ownership database or a survey results database as a subscriber attribute, because such an attribute does not functionally relate to the steps in the method claimed and because the subjective interpretation of the subscriber attribute database does not patentably distinguish the claimed invention.

37. As per Claims 22-24, Eldering and Ludtke do not expressly show wherein said data analyzer comprises a report creator, a multidimensional database, or a data-mining application.

38. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The method (computer-readable medium, system) for utilizing information relating to a subscriber, to identify said subscriber as a desirable subscriber would be performed regardless of the type of data analyzer used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

39. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform the method (computer-readable medium, system) using a report creator, a multidimensional database, or a data-mining application as a data analyzer, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data analyzer does not patentably distinguish the claimed invention.

Response to Arguments

40. Applicant's arguments filed 10/5/2004, with respect to Claims 1-3, 5-24 and 32-41, have been considered but are moot in view of the new ground(s) of rejection.

41. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

42. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

43. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (703) 605-0662. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.

44. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-3597 for After Final communications.

45. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5484.

JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

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December 28, 2004